

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RUDY STANKO,)	
)	8:06cv607
Plaintiff,)	
)	MEMORANDUM AND ORDER
vs.)	(appeal)
)	
JOSEPH BATAILLON, et al.,)	
)	
Defendants.)	

This matter is before the court on Filing No. 11, the Notice of Appeal filed by the plaintiff, Rudy Stanko, a prisoner. The plaintiff appeals Filing No. 8, the Memorandum and Order in which the court dismissed the plaintiff's complaint pursuant to 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(B), and Filing No. 9, the accompanying Judgment. Also before the court in Filing No. 11 is the plaintiff's Application for Leave to Proceed in Forma Pauperis ("IFP") on appeal.

The plaintiff's Application to proceed IFP on appeal is denied. The Eighth Circuit Court of Appeals has stated that "[d]istrict courts should continue to certify pursuant to [28 U.S.C.] § 1915(a)(3) and [Fed. R. App. P.] 24(a) whether or not an appeal by any appellant who has moved in the district court to proceed in forma pauperis on appeal is or is not taken in good faith. If the district court concludes that such an appeal is not taken in good faith, it shall, pursuant to [Fed. R. App. P.] 24(a), 'state in writing the reasons for the denial.'" Henderson v. Norris, 129 F.3d 481, 485 (8th Cir. 1997).

Having considered the record in this action, the court concludes that this appeal is not taken in good faith. As discussed in Filing No. 8, the plaintiff's claims in this case are frivolous; one of the defendants is immune from the plaintiff's claim for damages, and, at a minimum, the plaintiff has sued the wrong parties.

If a district court determines that an appeal is not taken in good faith or that the individual is not otherwise entitled to pauper status, the Clerk of the district court must serve notice of the district court's decision on the parties and the Court of Appeals. Fed. R. App. P. 24(a)(4). The appellant then has 30 days, following service of the Clerk's

notice, to file a motion in the Court of Appeals for leave to proceed IFP on appeal. Fed. R. App. P. 24(a)(5). Such a motion in the Court of Appeals must be accompanied by a copy of the IFP application filed in the district court, or by a new such application, and by a copy of the statement of reasons given by the district court for denial of IFP status on appeal. Id.

THEREFORE, IT IS ORDERED:

1. That Filing No. 11, the plaintiff's Application for Leave to Proceed IFP on appeal, is denied; and
2. That the Clerk of Court shall send a copy of this Memorandum and Order to the parties and to the Eighth Circuit Court of Appeals as the notice required by Fed. R. App. P. 24(a)(4), and the Clerk shall process the appeal to the Eighth Circuit.

DATED this 28th day of February, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge